



DA \$

PTO/SB/21 (05-03)

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/421,590		
Filing Date	October 20, 1999		
First Named Inventor	Dugan et al.		
Art Unit	2158		
Examiner Name	A. Baugh		
Total Number of Pages in This Submission	11	Attorney Docket Number	COS98021

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please Identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Copy of Executed Declaration;
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	<input type="checkbox"/> Copy of Letter and Courier Information; and
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> Return Postcard.
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application	Remarks	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Eden U.I. Straight, Reg. No. 51,205 WorldCom, Inc.
Signature	
Date	June 10, 2003

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	Tracy Goodwin	
Signature		Date June 10, 2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 130.00)

Complete If Known

Application Number	09/421,590
Filing Date	October 20, 1999
First Named Inventor	Dugan et al.
Examiner Name	A. Baugh
Art Unit	2158
Attorney Docket No.	COS98021

METHOD OF PAYMENT (check all that apply)

 Check Credit card Money Order Other None
 Deposit Account:

Deposit Account Number
13-2491

Deposit Account Name
WorldCom, Inc.

The Director is authorized to: (check all that apply)

-
- Charge fee(s) indicated below
-
- Credit any overpayments
-
-
- Charge any additional fee(s) during the pendency of this application
-
-
- Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 750	2001 375	Utility filing fee	
1002 330	2002 165	Design filing fee	
1003 520	2003 260	Plant filing fee	
1004 750	2004 375	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1) (\$)			

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	-20** =	X	=	Fee from below	Fee Paid
Independent Claims	- 3** =	X	=		
Multiple Dependent		X	=		

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		

**or number previously paid, if greater. For Reissues, see above

3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 410	2252 205	Extension for reply within second month	
1253 930	2253 465	Extension for reply within third month	
1254 1,450	2254 725	Extension for reply within fourth month	
1255 1,970	2255 985	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing a brief in support of an appeal	
1403 280	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	Petition to revive - unintentional	
1501 1,300	2501 650	Utility issue fee (or reissue)	
1502 470	2502 235	Design issue fee	
1503 630	2503 315	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	130.00
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 750	2810 375	For each additional invention to be examined (37 CFR 1.129(b))	
1801 750	2801 375	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 130.00

(Complete if applicable)				
Name (Print/Type)	Eden H. L. Stright	Registration No. (Attorney/Agent)	51.205	Telephone 202.736.6008
Signature		Date	June 10, 2003	

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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JUN 13 2003

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OFFICE OF PETITIONS



Docket No.: COS98021

#16

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Dugan et al.

Confirmation No.: 4368

Serial No.: 09/421,590

Art Unit: 2158

Filed: October 20, 1999

Examiner: A. Baugh

Title: Method and Apparatus for Deploying Service Modules Among Service Nodes
Distributed in an Intelligent Network

RENEWED PETITION UNDER 37 C.F.R. § 1.47(a)

Commissioner of Patents and Trademarks
PO Box 1450
Alexandria, VA 22313-1450

Sir:

The decision mailed on April 16, 2003, indicated that the previous Petition did not specify who made contact with Inventor Holmes, and it is unclear who delivered to Mr. Holmes a copy of the application. The undersigned is renewing the petition under the provisions of 37 C.F.R. § 1.47(a) and is submitting the following on behalf of the assignee, MCI Communications Corporation.

On April 30, 2003, a *bona fide* attempt was made to present a copy of the above-referenced application, including claims and drawings, along with the Declaration which were sent via Federal Express courier to Mr. Holmes at his home address. A copy of the cover letter, Declaration and Federal Express Tracking Results: Detail is attached herewith (Exhibit A). This letter stipulates a response due date of May 16, 2003, by Mr. Holmes. MPEP 409.03(d)

On May 9, 2003, a release waiver was signed and left for the courier to leave the package for Mr. Holmes, thereby acknowledged receipt of the subject application and Declaration. Our correspondence to Mr. Holmes requested a response date of May 16, 2003, or we would assume by lack of a response that he was unable or unwilling to cooperate in prosecution of this application. No verbal or written response has been given by Mr. Holmes to date.

The last known address for Mr. Allen Holmes is as follows:

5375 Chambrey Drive
Colorado Springs, CO 80919

All the available joint inventors, Ajay P. Deo, Andrew Dugan, Kelvin R. Porter and Terence A. Robb, have executed a Declaration and Power of Attorney on their own behalf as

06/12/2003 SLUANG1 00000008 132491 09421590

1

001:FC:t1460 date: 00130/0006H
06/12/2003 SLUANG1 00000008 132491 09421590
01 FC:t1460 130.00 CR

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JUN 13 2003

OFFICE OF PETITIONS

required by 37 CFR § 1.63 (Exhibit B). This Declaration signed by all the available inventors with the signature block of the Allen Holmes, the nonnonsigning inventor, should be treated as having been signed by all the available inventors on behalf of the nonsigning inventor. MPEP 409.03(a)

The undersigned believes that the application should be granted status under 37 CFR 1.47(a) and be allowed to proceed with or without the cooperation of Mr. Holmes.

A petition fee of \$130.00 and late filing surcharge of \$130.00 is hereby authorized to be charged to Deposit Account 13-2491. Any other fees under 37 CFR 1.16 or 1.17 required to avoid abandonment of this Application are also hereby authorized to be charged to Deposit Account 13-2491.

In view of the fact that Mr. Holmes has received a copy of the Application and Declaration and has been unwilling to review the application or sign the Declaration, that the Declaration executed by the four available inventors is an acceptable Declaration under 37 C.F.R. §1.63, that the appropriate petition fee under 37 CFR § 1.17(h) is provided, and that Mr. Holmes's last known address has been provided, the granting of this Petition is respectfully requested.

Respectfully submitted,

Date: 6/9/03



Eden J.K. Stright
Registration No. 51,205

WorldCom, Inc.
Technology Law Dept.
1133 19th Street, N.W.
Washington, DC 20036
(202) 736-6008

EXHIBIT A

WORLDCOM

May 8, 2003

Mr. Robert Polk,
McCay Law Group
1717 15th Street, NW
Washington, DC 20036

Allen Holmes
5375 Chambrey Drive
Colorado Springs, CO 80919

VIA COURIER

Re: U.S. Patent Application for
"Method and Apparatus for Deploying Service Modules Among Service Nodes
Distributed in an Intelligent Network"
Docket No. COS98021

Dear Mr. Holmes:

We have previously attempted to reach you in regard to the above-noted patent application filed October 20, 1999. You are named as an inventor in this application and consequently the United States Patent and Trademark Office (USPTO) is now requesting that we submit the required formal papers with your signature.

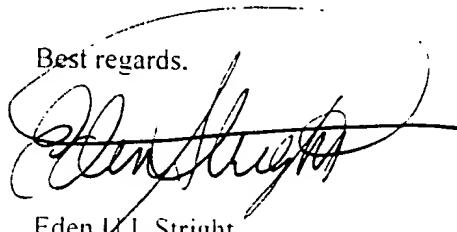
We have enclosed a copy of the entire patent application, including the specification, claims, and drawings as currently on file with the USPTO. Please review the entire application and sign and date the enclosed Declaration and Assignment forms where your name is listed. So that we may respond to the USPTO in a timely fashion, please promptly complete and return the signed forms in self addressed stamped envelop enclosed herewith.

If we do not receive some form of response from you by May 16, 2003, we will assume that you are either unable or unwilling to cooperate in further supporting this patent application.

In accordance with our duty of disclosure to the U.S. Patent and Trademark Office, if you or any one substantively involved in the application is aware of any information, such as other patent applications, patents or technical documents, not already called to our attention, which is relevant to the subject matter or examination of the application, please provide us with such information so that we may submit it to the U.S. Patent and Trademark Office for their consideration.

Should you have any questions about any of the above, please contact me at 202-736-6008.
Thanks in advance for handling this promptly.

Best regards,


Eden U.L. Straight

Enclosures

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JUN 13 2003

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[Ship](#) [Track/History](#) [Address Book](#) [Preferences](#) [Fast Ship](#) [Reports](#)[**<< Log out**](#)[**H**](#)**Shipment Details**

Ship To:	Allen Holmes 5375 Chambrey Drive Colorado Springs, CO 80919 US 202.736.6008	Type of Package: Pickup/Drop Off	FedEx Envelope will use scheduled pickup
From:	EDEN STRIGHT WORLDCOM, INC 1133 19TH STREET NW WASHINGTON, DC 20036 US 2027366008	Total Weight: Declared Value: Shipper Account Number: Bill Shipment To: Courtesy Rate Quote*: Special Services	1 LBS 0 USD 256718189 256718189 *5.32 Express
Tracking Number:	791375482994	Shipment Type:	
Ship date:	May 8 2003		
Type of service:	Standard Overnight		

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*The courtesy rate shown here may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.

Track shipments

Detailed results
Tracking number 791375482994
Reference number
Ship date 05/08/2003
Delivered to Recipient COLORADO SPRINGS CO
Delivery location 05/09/2003 14:08
Delivery datetime 4092130
Signed for by Standard Envelope
Service type

Email your detailed tracking results

From	[Redacted]
To	[Redacted]
To	[Redacted]
To	[Redacted]
Add a message to this email	[Redacted]
Send Email	

Scan activity

Delivered/COLORADO SPRINGS CO
Delivered/COLORADO SPRINGS CO
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CO
Arrived at FedEx Destination Location/COLORADO
SPRINGS CO
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Arrived at FedEx Ramp/COLORADO SPRINGS CO
Left FedEx Sort Facility/MEMPHIS TN
Left FedEx Sort Facility/MEMPHIS TN
Arrived at Sort Facility/MEMPHIS TN
Left FedEx Ramp/DULLES VA
Left FedEx Origin Location/WASHINGTON DC
Picked up by FedEx/WASHINGTON DC

Date/Time

05/09/2003 14:08
05/09/2003 14:08
05/09/2003 07:58

Comments

No signature required - release waiver on file
No signature required - release waiver on file

[Print](#) [Close](#)

EXHIBIT B

**DECLARATION AND POWER OF ATTORNEY
FOR UTILITY PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below, next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Method and Apparatus for Deploying Service Modules Among Service Nodes Distributed in an Intelligent Network

the specification of which

- is attached hereto
- was filed on 10/20/99 as Application Serial No. 09/421,590
and was amended on

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I do not know and do not believe that the same was ever known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof of more than one year prior to this application, and said invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code §119 (a)-(d) or §365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application(s)

(number)	(country)	(date filed)
----------	-----------	--------------

Priority Claimed

yes no

(number)	(country)	(date filed)
----------	-----------	--------------

yes no

Patent Docket No.:

I hereby claim the benefit under Title 35, United States Code §119(e) of any United States provisional application(s) listed below.

(Application Number(s))	(Filing Date mm/dd/yy)
60/061,173	10/6/97
60/104,890	10/20/98

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) or Section 365(c) of any PCT international application designating the United States of America, listed below, and insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

(Application Serial No.)	(Filing date)	(Status)
09/128,937	8/5/98	Pending

I hereby appoint Timothy D. Casey, Reg. No. 33,124; Albert M. Crowder, Jr., Reg. No. 28,063; Jubin Dana, Reg. No. 41,400; Carl Evans, Reg. No. 33,874; Deborah Miller, Reg. No. 37,679; Stephen Pentlicki, Reg. No. 40,125; Craig L. Plastrik, Reg. No. 41,254; Paul A. Roberts, Reg. No. 40,289; and Jessica Young, Reg. No. 39,884 my attorneys and Satheesh Karra, Reg. No. 40,246 my patent agent with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

Send correspondence to:
 Technology Law Department
 MCI WORLDCOM, Inc.
 1133 19th STREET NW
 WASHINGTON, D.C. 20036

Direct Telephone Calls To:
 (719) 535-1451

I hereby declare that all statements made herein of my knowledge are true and that all statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of Sole or First Inventor: Ajay P. Deo
 P.O./Residence Address: 2508 Sir Tristain Lane, Lewisville, Texas 75056
 Citizenship: India

Signature: Ajay Deo Date: 2/4/2000

Full name of Additional Joint Inventor, if any: Andrew Dugan
 P.O./Residence Address: 1855 Eldorado Circle, Superior, Colorado, 80027-8279
 Citizenship: USA

Signature: _____ Date: _____

Full name of Additional Joint Inventor, if any: Allen Holmes
 P.O./Residence Address: 5375 Chambrey Drive, Colorado Springs, Colorado 80919
 Citizenship: USA

Signature: _____ Date: _____

Patent Docket No.: _____

I hereby claim the benefit under Title 35, United States Code §119(e) of any United States provisional application(s) listed below.

(Application Number(s))	(Filing Date mm/dd/yy)
60/061,173	10/6/97
60/104,890	10/20/98

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) or Section 365(c) of any PCT international application designating the United States of America, listed below, and insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

(Application Serial No.)	(Filing date)	(Status)
09/128,937	8/5/98	Pending

I hereby appoint Timothy D. Casey, Reg. No. 33,124; Albert M. Crowder, Jr., Reg. No. 28,063; Jabin Dana, Reg. No. 41,400; Carl Evans, Reg. No. 33,874; Deborah Miller, Reg. No. 37,679; Stephen Pentlicki, Reg. No. 40,125; Craig L. Plastrik, Reg. No. 41,254; Paul A. Roberts, Reg. No. 40,289; and Jessica Young, Reg. No. 39,884 my attorneys and Satheesh Karra, Reg. No. 40,246 my patent agent with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

Send correspondence to:
Technology Law Department
MCI WORLDCOM, Inc.
1133 19th STREET NW
WASHINGTON, D.C. 20036

Direct Telephone Calls To:
(719) 535-1451

I hereby declare that all statements made herein of my knowledge are true and that all statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of Sole or First Inventor: Ajay P. Deo
P.O/Residence Address: 2508 Sir Tristram Lane, Lewisville, Texas 75056
Citizenship: India

Signature: _____ Date: _____

Full name of Additional Joint Inventor, if any: Andrew Dugan
P.O/Residence Address: 1855 Eldorado Circle, Superior, Colorado, 80027-8279
Citizenship: USA

Signature:  Date: 2/14/02

Full name of Additional Joint Inventor, if any: Allen Holmes
P.O/Residence Address: 5375 Chambrey Drive, Colorado Springs, Colorado 80919
Citizenship: USA

Signature: _____ Date: _____

Patent Docket No.: _____

Full name of Additional Joint Inventor, if any: Kelvin R. Porter
P.O/Residence Address: 17319 Calla Drive, Dallas, Texas 75252
Citizenship: USA

Signature: Kelvin R. Porter Date: February 3rd, 2000

Full name of Additional Joint Inventor, if any: Terence A. Robb
P.O/Residence Address: 223 Chatham Drive, Colorado Springs, Colorado 80906
Citizenship: USA

Signature: T. A. Robb Date: 2/2/00

Full name of Additional Joint Inventor, if any:
P.O/Residence Address:
Citizenship:

Signature: _____ Date: _____

Full name of Additional Joint Inventor, if any:
P.O/Residence Address:
Citizenship:

Signature: _____ Date: _____

Full name of Additional Joint Inventor, if any:
P.O/Residence Address:
Citizenship:

Signature: _____ Date: _____

Full name of Additional Joint Inventor, if any:
P.O/Residence Address:
Citizenship:

Signature: _____ Date: _____



DOCKETED

Paper No. 15

WORLDCOM, INC.
1133 19TH STREET NW
WASHINGTON, DC 20036

Due Date

6/16/2003

COPY MAILED

APR 16 2003

In re Application of :
Dugan et al. :
Application No. 09/421,590 :
Filed: October 20, 1999 :
Attorney Docket No. COS-98-021 :

OFFICE OF PETITIONS
ON PETITION

This decision concerns the February 16, 2000 petition under 37 CFR 1.47(a).¹

The petition is **DISMISSED**.

Five inventors are named in this application. The petition, accompanied by a declaration signed by all of the inventors except Allen Holmes ("Holmes") ("2/16/00 Declaration"), asserts that Holmes refuses to sign the declaration and requests that the available inventors be allowed to file this application on behalf of themselves and Holmes.

Under 37 CFR 1.47(a), the available inventors may file this application on behalf of themselves as well as Holmes provided that a *bona fide* attempt has been made to present to Holmes, for review and signature, a copy of the **entire application (specification including claims; drawings)**; and that the latter refuses to join in this application.²

To show that Holmes has refused to join in this application despite such a *bona fide* attempt, the petition must include, *inter alia*, a statement of facts concerning the circumstances of the presentation of the application papers to Holmes at his last known address,³ and his subsequent refusal.⁴

¹ This petition was recently forwarded to the Office from the Examiner. The Office sincerely apologizes for any inconvenience caused by the delay.

² See *infra* note 4.

³ 37 CFR 1.47(a); MPEP section 409.03(e) (Aug. 2001).

⁴ MPEP section 409.03(d) (Aug. 2001) (Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted . . . When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts.).

The petition encloses an affidavit by Albert M. Crowder, Jr. ("Crowder") ("Crowder Affidavit"), counsel for Assignee, setting forth that:

- (1) Holmes, "when contacted regarding execution of the declaration and assignment relating to the . . . application, . . . refused to join in . . .";⁵
- (2) In September of 1999, a copy of the application "was delivered to [Holmes at] his last known address";⁶
- (3) Holmes "informed MCI WorldCom that he refused to join in this application" but Crowder went ahead and sent Holmes a reminder letter in February of 2000;⁷ and
- (4) Holmes has declined to reply.⁸

However:

- The petition does not specify who made the contact with Holmes, and in what manner [(1) above]; or to whom in MCI did Holmes indicate his refusal to join in this application [(3) above];
- It is unclear who delivered, or had delivered, to Holmes, a copy of the application in September of 1999; or whether that copy of application was complete with the specification including claims, as well as drawings [(2) above];
- The petition provides no explanation how Crowder reached his conclusion in (4), that Holmes declined to reply [to Crowder's requests]; or that Holmes' lack of response represents his refusal to join in this application.⁹

Consequently, the Office is unable to conclude that the Crowder Affidavit constitutes the "statement of facts" required for granting a petition under 37 CFR 1.47(a). The instant petition is thus dismissed, and the 2/16/00 Declaration is not accepted.

⁵ Crowder Affidavit, page 1, paragraph 3.

⁶ Crowder Affidavit, page 1, paragraph 4, 2nd sentence.

⁷ Petition, page 1, paragraph (II)(2), 2nd to the last sentence.

⁸ Petition, page 1, paragraph (II)(2), last sentence; Crowder Affidavit, page 1, paragraph 4. last sentence: "Holmes has steadfastly refused to reply to our requests."

⁹ There is no evidence that counsel has confirmed with Holmes regarding his receipt of the application papers delivered in September of 1999.

Options

To prevent abandonment of this application, either of the following must be filed within **TWO MONTHS** from the mailing date of this decision:¹⁰

(1) An oath/declaration properly executed by **all** of the inventors, including Holmes;¹¹
OR,

(2) A renewed petition under 37 CFR 1.47(a) (no fee) that:

-includes appropriate statement(s) regarding: the fact that a copy of the entire application (specification including claims; drawings) was provided to Holmes at his last known address; and, those facts relied upon to conclude that Holmes refuses to join in this application; and

-is addressed as follows:

by mail/by hand: Commissioner for Patents, USPTO
Attn: Office of Petitions
Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

by fax: (703) 308-6916
Attn: Office of Petitions

As authorized in the instant petition, the \$130 petition fee has been charged to Deposit Account No. 13-2491.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.


RC Tang
Petitions Attorney
Office of Petitions

¹⁰ Unless proper extension(s) of time under 37 CFR 1.136(a) is (are) obtained. See 37 CFR 1.53(f) (If an application which has been accorded a filing date . . . does not include an oath or declaration by the applicant pursuant to §1.63 . . . , applicant will be notified and given a period of time within which to . . . file an oath or declaration . . . and pay the surcharge required by §1.16(e) to avoid abandonment.).

¹¹ Submit directly to the Office of Initial Patent Examination, along with a copy of this decision.